

SENATE BILL

No. 47

Introduced by Senator Battin

(Principal coauthor: Assembly Member Keeley)

February 22, 2001

An act to add and repeal Article 10.5 (commencing with Section 391.1) of Part 1 of Division 1 of the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as introduced, Battin. Public utilities: interim short-run avoided cost methodology.

(1) Existing law provides for a short-run avoided cost methodology for pricing electricity generated by a nonutility small power production or cogeneration facility, as defined.

This bill, regarding a contract between the Pacific Gas and Electric Company, the Southern California Edison Company, or the San Diego Gas and Electric Company, all California public utility corporations, and qualifying small power production or cogeneration facilities (QF), as defined, would specify the energy pricing methodology, to be used under purchase power agreements for QFs. The bill would require the commission to provide standard-form amendments for power purchase agreements to implement the provisions of this act. The bill would require the commission to include in those amendments for full cost recovery for the entire duration of the amendments.

This bill would require the Treasurer to approve natural gas prices for specified gas purchase options for gas-fired QFs. The bill would require the Treasurer to find the gas price to be in the best interest of the state.

The bill would require the Treasurer at least 3 times per year to submit a report to the Governor and to appropriate committees of the Legislature on the performance of each public utility regarding the gas purchase options.

(2) Existing law establishes the Central Valley Agricultural Biomass-To-Energy Incentive Grant Program.

This bill would provide additional funding for the program, upon appropriation, and would extend the program until June 30, 2006.

(3) Because existing law makes it a crime to violate an order of the Public Utilities Commission, this bill would expand the definition of an existing crime by requiring the commission to issue new orders, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The provisions of the bill would become in operation on July 1, 2006, and would be repealed as of January 1, 2007.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.5 (commencing with Section 391.1)
2 is added to Part 1 of Division 1 of the Public Utilities Code, to read:

3

4 Article 10.5. Interim Short-Run Avoided Cost Energy
5 Methodology

6

7 391.1. For the purposes of this article, the following terms
8 have the following meanings:

9 (a) "Burnertip price of gas" means the border price of gas plus
10 the interstate and intrastate gas transportation costs.

11 (b) "Contract" means a power purchasing agreement.

12 (c) "Gas-fired QF" means a qualifying cogeneration facility
13 whose primary fuel is natural gas.

(d) “GP” is “Gas Price” which means:

(1) For Southern California Edison Company, the burnertip price of natural gas.

(2) For Pacific Gas & Electric Company, the border price of natural gas.

(3) For San Diego Gas and Electric Company, the border price of natural gas.

(e) “GPn” means the border gas price as reflected in the applicable indices for the period being considered.

(f) “Non-gas-fueled QF” means a qualifying small power production facility or a qualifying cogeneration facility whose primary fuel is other than natural gas.

(g) “Power purchase agreement” means an agreement entered into pursuant to the PURPA between an electrical corporation and a QF that provides for the sale and delivery of electricity from the QF to the electrical corporation.

(h) “QF” means a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), (18) and 824a-3), and the regulations adopted for those sections under that act by the Federal Energy Regulatory Commission (18 C.F.R. 292.101-292.602).

(i) “Public Utility Regulatory Policies Act of 1978” means federal Public Law 95-617.

(j) “PURPA” means the Public Utility Regulatory Policies Act of 1978 and the regulations adopted under that act by the Federal Energy Regulatory Commission.

(k) “SRAC” means the short-run avoided cost of energy.

(l) “SRAC methodology” means the short-run avoided cost energy methodology described in subdivision (b) of Section 390 that is used to determine energy prices paid to a QF. The methodology implements PURPA.

(m) “Switching QF” means a QF that has elected to have energy payments based on the hourly day-ahead constrained market clearing price paid by the independent Power Exchange under subdivision (c) of Section 390, as authorized by the commission in its Decision 99-11-025.

391.2. The Legislature finds and declares all of the following:

(a) The enactment of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session provides that the state will purchase all of the electricity, and ancillary services provided by the Independent System Operator, needed by consumers in excess of investor-owned generation, inter-utility contracts, and purchases from QFs. This article defines how the SRAC for QFs should be computed, given the enactment of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session.

(b) Subdivision (b) of Section 390 and Decision 96-12-028 of the commission provide that the short-run avoided cost of energy within the meaning of PURPA, paid by an electrical corporation to a QF, be determined monthly based on an average of monthly indices of the price of natural gas at the California border.

(c) The determination of the SRAC based on the monthly gas price indices produces significant payment volatility and price instability for electrical corporations and the QFs.

(d) Restatement of the SRAC for non-gas-fueled QFs from the current monthly determination into a fixed value for a term of years will benefit customers, electrical corporations, and the QFs, by reducing payment volatility and increasing price stability.

(e) Restatement of the SRAC for gas-fired QFs from the current reliance on monthly natural gas indices to the use of longer-term natural gas prices will benefit customers, electrical corporations, and QFs by reducing payment volatility and increasing price stability.

(f) California’s biomass-to-energy industry provides clean renewable energy by converting millions of tons of waste wood and related organic materials derived from agricultural, urban, and forestry-related sources into electricity every year. However, this energy is provided at substantial expense. It is in the public interest to provide incentives to the biomass-to-energy industry to offset the cost of biomass fuel and retain the environmental and other benefits provided therefrom.

(g) The financial security and creditworthiness of California’s electrical corporations, and the assurance of their ability to make timely payments to QFs, is essential to the full effectiveness of this article.

391.3. (a) This section applies to QFs that operate under Sections 391.4 to 391.8, inclusive.

(b) Except in connection with the implementation of power purchase agreement provisions related to SRAC payments and to other matters expressly addressed in this article, nothing in this article shall be interpreted to amend or modify any provision of a power purchase agreement, including, but not limited to, contract capacity provisions, nonstandard energy pricing terms, and fixed energy prices under Interim Standard Offer 4, or any other power purchase agreement. This subdivision does not prohibit mutual agreements to changes in a power purchase agreement by the parties to the agreement.

(c) Time-of-delivery and seasonal energy allocation factors in effect on January 1, 2001, and specified in a power purchase agreement shall be applied to the SRAC payment determined pursuant to the applicable provision of this article following the methodology in the purchase power agreement for applying those allocation factors to the SRAC energy payment. The allocation factors may not be modified, except upon mutual agreement of the parties to a power purchase agreement.

(d) Energy line loss factors at both the transmission and distribution level shall be set at 1.0, unless a different number is otherwise specifically set forth in a power purchase agreement or unless the parties to a power purchase agreement agree otherwise.

(e) The commission shall provide standard-form amendments to implement the provisions of this article. All power purchase agreements subject to this article shall be modified to include the applicable standard-form amendments. The commission shall provide in those amendments for full cost recovery for the entire duration of the amendments.

(f) The provision of subdivision (c) of Section 390 that permits a nonutility power generator subject to Section 390 to elect to receive energy payments based upon the clearing price from the Independent Power Exchange shall not be operative for the period of January 1, 2001, and June 30, 2006, inclusive, except for a nonutility power generator that elected under subdivision (c) of Section 390 prior to January 1, 2001.

(g) (1) The implementation of this article is necessary so that QFs and electrical corporations can make long-term commitments that involve substantial risks. Further, there needs to be assurances that these commitments will be honored, including full cost recovery by the electrical corporations. The commission shall

1 promptly approve, without modification, the agreements entered
2 into by electrical corporations and QFs to implement this article.
3 The commission's decision shall be final and the commission may
4 not change the decision.

5 (2) At the time of approving an agreement necessary to
6 implement this article, the commission shall make an irrevocable
7 determination of per se reasonableness of the agreement, including
8 full cost recovery by the electrical corporation of the resulting
9 costs.

10 (h) Energy payments to QFs, except switching QFs, for energy
11 delivered beginning November 1, 2000, to February 1, 2001, shall
12 be in accordance with the SRAC methodology and the avoided
13 cost postings of the electrical corporations made in accordance
14 with that methodology.

15 391.4. (a) Except as provided in Sections 391.5 and 391.6,
16 subdivision (d) of Section 391.7, and subdivisions (b), (c), and (d)
17 of this section, for the period of February 1, 2001, to June 30, 2006,
18 inclusive, payments for energy delivered by non-gas-fueled QFs
19 shall be established at 5.37 cents (\$0.0537) per kilowatthour,
20 subject to subdivision (c) of Section 391.3.

21 (b) (1) A QF with a power purchasing agreement with fixed
22 energy provisions, in which those fixed energy provisions will
23 terminate during the period of February 1, 2001, to June 30, 2006,
24 inclusive, may make the following elections regarding the electric
25 power that is the subject of the agreement:

26 (A) Terminate the fixed energy provisions of the agreement as
27 of February 1, 2001, and accept instead the pricing provisions of
28 subdivision (a).

29 (B) Wait until the fixed energy provisions of the agreement
30 terminate pursuant to the agreement and the energy pricing
31 converts to SRAC payments. If the election is this subparagraph,
32 the QF may elect SRAC payments determined pursuant to one of
33 the following methods:

34 (i) The SRAC methodology as determined by the commission.

35 (ii) The product of 5.37 cents (\$0.0537) per kilowatthour times
36 the levelized cost of a forward burnertip natural gas strip at the
37 time of conversion to June 30, 2006, divided by six dollars and
38 fifty cents (\$6.50) per MMBtu.

39 (2) If a power purchasing agreement has both fixed energy
40 provisions and energy payments subject to subdivision (c) of

Section 390, the fixed energy provisions shall be subject to this subdivision and the energy payments subject to subdivision (c) of Section 390 shall be subject to Section 391.6.

(3) A QF with respect to power purchasing agreements that are subject to this subdivision shall make all elections required by this subdivision within 30 days from the effective date of this article. If the elections are not made within that 30-day period, then when the fixed energy provisions of the power purchasing agreement terminate pursuant to the agreement and the energy payments convert to SRAC payments, the SRAC payments shall be determined using the SRAC methodology as determined by the commission.

(c) Notwithstanding subdivision (b), San Diego Gas and Electric Company and Pacific Gas and Electric Company shall pay any non-gas-fueled QF whose forecast energy payments under an Interim Standard Offer 4 agreement terminate in 2001, 5.37 cents (\$0.0537) per kilowatthour, subject to subdivision (c) of Section 391.3, for all energy delivered to San Diego Gas and Electric Company or Pacific Gas and Electric Company, as applicable, commencing on the date on which the QF's forecast energy payments terminate and continuing through June 30, 2006.

(d) For a QF with a contract with Southern California Edison Company for electricity generated by wind that specifies Capacity Payment Option B, the pricing for that contract shall be determined by this subdivision. The contract shall be amended as follows:

(1) On the effective date of this article, the contract shall be converted to Capacity Option A (forecast of as-available capacity). The conversion shall not obligate the QF to make any capacity payment refund to Southern California Edison, or subject the QF to any other penalty or repayment obligation.

(2) For the five-year period commencing as of the effective date of this article, a fixed, combined payment for both energy and capacity in the total amount of 7.8 cents (\$0.078) per kilowatthour shall be paid for each kilowatthour of electricity delivered pursuant to the contract. The fixed payment shall be the total compensation payable by Southern California Edison for electricity delivered under the contract during the five-year period. No allocation factor, including, but not limited to, time-of-delivery, may be applied to the fixed payment during the

1 five-year period. After the five-year period, the price for energy
2 shall revert to a price determined by using the then-current
3 commission-approved SRAC methodology. Capacity payments
4 following the five-year period shall be made as set forth in
5 paragraph (3). Energy and capacity payments following the
6 conclusion of the end of the five-year period shall be subject to
7 commission-approved time-of-delivery allocation factors that are
8 then being applied generally to SRAC payments.

9 (3) Commencing on the day following the five-year period that
10 commences on the effective date of this article, capacity payments
11 shall commence and be payable for the remaining term of the
12 contract at an annual rate equal to the annual rate specified in the
13 applicable contract for payment under the firm capacity option.
14 That annual rate shall be converted to a cents per kilowatthour rate
15 pursuant to Southern California Edison's general methodology for
16 making forecast as-available capacity payments.

17 (4) It is the intent of the Legislature that, on the effective date
18 of this section, Southern California Edison Company and the QFs
19 subject to this subdivision mutually waive any and all pending
20 claims arising from or related to compliance with firm capacity
21 on-peak performance requirements, compliance with annual
22 capacity demonstration requirements, or failures to deliver
23 contract capacity during system emergencies. It is further intended
24 by the Legislature that no payments, refunds, or penalties shall be
25 due or owing from a QF to Southern California Edison Company
26 with respect to the pending claims on any claims of the same nature
27 that arose between the parties prior to the effective date of this
28 section.

29 391.5. (a) Commencing on February 1, 2001, and ending on
30 June 30, 2006, payments for energy deliveries by QFs employing
31 solar thermal technology shall be based 75 percent on the pricing
32 methodology described in subdivision (a) of Section 391.4, and 25
33 percent based the energy pricing formula as established pursuant
34 to subdivision (c) of Section 391.8, even if the contract is not with
35 the Southern California Edison Company.

36 (b) If a non-gas-fueled QF whose primary energy source is
37 solar energy has received final Federal Energy Regulatory
38 Commission certification orders, the commission shall not oppose
39 the use of natural gas by the QF within the limits of those
40 certification orders.

391.6. (a) For the month of January 2001, a switching QF shall be paid for energy deliveries under the SRAC methodology, as that methodology was being implemented by the commission on January 1, 2001.

(b) The “switch date” for each switching QF shall be the date on which the switching QF began to receive energy prices based on the day-ahead clearing price paid by the independent Power Exchange under subdivision (c) of Section 390. Subdivision (c) or (d) shall apply to a switching QF for the following terms, based on the QF’s switch date:

(1) If the switch date is June 1, 2000, the term is 54 months.

(2) If the switch date is July 1, 2000, the term is 48 months.

(3) If the switch date is August 1, 2000, the term is 42 months.

(4) If the switch date is September 1, 2000, the term is 36 months.

(5) If the switch date is October 1, 2000, the term is 30 months.

(6) If the switch date is November 1, 2000, the term is 24 months.

(7) If the switch date is December 1, 2000, the term is 18 months.

(c) Notwithstanding Section 391.4, commencing on February 1, 2001, and continuing for the term required under subdivision (b), the price for energy deliveries to an electrical corporation by a switching QF that is non-gas-fueled shall be 5.02 cents (\$0.0502) per kilowatthour. Following the expiration of that term, the price for energy deliveries by that QF shall be established pursuant to the methodology set forth in Section 391.4.

(d) Beginning on February 1, 2001, and continuing for the term required under subdivision (b), the price for energy deliveries to an electrical corporation by a switching QF that is gas-fired shall be adjusted by subtracting 3.5 mills (\$0.0035) per kilowatthour from the rate set forth under Section 391.8. Following the expiration of that term, prices for energy deliveries by that QF shall be established in accordance with the methodology set forth in Section 391.8, without adjustment.

(e) The price per kilowatthour for each switching QF for energy delivered between the QF’s switch date and December 31, 2000, shall be equal to the independent Power Exchange’s hourly day-ahead constrained market clearing price for the zone in which

1 the QF is located, and shall not be subject to adjustment, revision,
2 or true-up of any kind.

3 391.7. (a) For purposes of this section, “program” means the
4 Central Valley Agricultural Biomass-to-Energy Incentive Grant
5 Program established under Part 3 (commencing with Section
6 1101) of Division 1 of the Food and Agricultural Code.

7 (b) Upon appropriation, the sum of twenty million dollars
8 (\$20,000,000) per year shall be transferred from the General Fund
9 to the California Trade and Commerce Agency for the purposes of
10 providing funding, commencing on July 1, 2001, to offset the costs
11 of certain qualified solid biomass fuels, including, but not limited
12 to, urban wood waste and forest-related materials resulting from
13 timber harvesting conducted in full compliance with the
14 Z’berg-Nejedly Forest Practice Act of 1973 (Chapter 8
15 (commencing with Section 4511) of Part 2 of Division 4 of the
16 Public Resources Code) utilized by any biomass-to-energy
17 facility, and to extend until June 30, 2006, the funding of the
18 program, both as established under those provisions and as
19 expanded under this section. This funding shall be provided in
20 addition to any other funding provided for the existing program.

21 (c) The program shall continue to be administered by the Trade
22 and Commerce Agency.

23 (d) Southern California Edison Company shall pay a biomass
24 QF company, whose forecast energy payments under an Interim
25 Standard Offer 4 contract terminate during the period of February
26 1, 2001, to June 30, 2006, inclusive, 5.37 cents (\$0.0537) per
27 kilowatthour subject to subdivision (c) of Section 391.3, for all
28 energy delivered to the Southern California Edison Company from
29 the termination date of the forecast energy payments to June 30,
30 2006, inclusive.

31 391.8. (a) The purpose of the pricing methodology
32 applicable to gas-fired QFs in this section is to link the SRAC price
33 for energy provided by a gas-fired QF to the long-term cost of
34 natural gas for the period from February 1, 2001, to June 30, 2006,
35 inclusive, or if the gas-fired QF’s power purchase agreement
36 terminates after commencement of that period and prior to June
37 30, 2006, then the period from that termination date to June 30,
38 2006, inclusive, by offering to the gas-fired QF the benchmark
39 option, the portfolio option, and the actual cost option, pursuant to
40 subdivision (g).

(b) For a gas-fired QF selling energy to Pacific Gas and Electric Company, the SRAC payment shall be determined in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001, except that the GPn in the formula shall be replaced with a long-term GP. A long-term GP shall be established for the QF in accordance with subdivision (g). Until the time that a long-term GP is established under the agreement on long-term gas purchase arrangements, or following expiration of a long-term GP and prior to the establishment of a new long-term GP, if any, the gas-fired QF shall be paid for energy deliveries in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001.

(c) For a QF selling energy to Southern California Edison Company, the SRAC payment for the QF shall be set equal to the sum of the following:

(1) The product of 9,821 Btu per kilowatthour, subject to subdivision (c) of Section 391.3, and the applicable long-term GP in dollars per MMBtu for that QF determined pursuant to subdivision (g), and divided by 10,000.

(2) Three mills (\$0.003) per kilowatthour multiplied by the average California Consumer Price Index as of December 31 of the year prior to the payment determination, and divided by the average California Consumer Price Index as of December 31, 2000.

Until the time that a long-term GP is established for the QF, or following expiration of a long-term GP and prior to the establishment of a new long-term GP, if any, the QF shall be paid for energy deliveries in accordance with the SRAC methodology, as that methodology was implemented by the commission on February 1, 2001.

(d) (1) For purposes of this subdivision, “QF Companies” mean Kern River Cogeneration Company, Sycamore Cogeneration Company, Midway Sunset Cogeneration Company, and Watson Cogeneration Company, individually or collectively.

(2) Notwithstanding any other provision of this article, the energy payments to QF companies shall be pursuant to the QF company’s power purchase agreement with Southern California Edison Company existing as of February 1, 2001, modified only in accordance with the agreement on long-term gas price determined pursuant to subdivision (g).

(3) Notwithstanding paragraph (2) of subdivision (a) of Section 367, the implementation and administration of these agreements and contract modifications shall, in accordance with paragraph (2) of subdivision (g) of Section 391.3, be approved by the commission as reasonable per se for cost recovery purposes and otherwise.

(e) For a gas-fired QF selling energy to San Diego Gas and Electric Company, the SRAC payment shall be determined in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001, except that GPn in the formula shall be replaced with a long-term GP. A long-term GP shall be established for the QF in accordance with subdivision (g). Until the time that a long-term GP is established for the QF, or following expiration of a long-term GP, and prior to the establishment of a new long-term GP, if any, the gas-fired QF shall be paid for energy deliveries in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001.

(f) A gas-fired QF with a power purchase agreement that contains nonstandard energy pricing terms may be included in the gas purchase arrangements described in subdivision (g) if its power purchase agreement is conformed, by mutual agreement of the parties, to reflect the applicable energy pricing methodology set forth in this section.

(g) (1) The long-term gas price shall be determined for a QF pursuant to one of the options of this subdivision. A public utility shall inform each gas-fired QF with whom it has a power purchase agreement of the process for the benchmark, portfolio, and actual cost gas options. Each gas-fired QF within 30 days of the effective date of this section shall select the gas purchase option to be used to determine the long-term gas price for purposes of this section. If the QF does not make the selection within the 30 days, the public utility shall select the option to be used for the QF. Once a gas purchase option is selected, neither the QF nor the public utility may change the option.

(2) Benchmark gas purchase option:

(A) Each public utility and the gas-fired QFs with whom it has a power purchase agreement shall, within 10 days of the effective date of this section, select a procurement manager. If the parties

cannot agree on the procurement manager, the Treasurer shall appoint the procurement manager.

(B) Each gas-fired QF shall provide the procurement manager with its gas requirements, timing, constraints, and any other pertinent information within 10 days of the procurement manager being selected.

(C) The procurement manager, working with the public utility, shall divide the gas-fired QFs into tranches, and shall determine when to send those tranches out for bid. The procurement manager and the public utility shall work to obtain the best gas price.

(D) When the procurement manager obtains a bid, he or she shall provide the bid to the public utility and to the Treasurer. Both shall have one hour of receipt of the bid to either accept or reject the bid. The Treasurer may only reject a bid if he or she determines the bid is not in the state's best interest for recovering the moneys the state has borrowed to finance the purchase of electric power.

(E) If both the public utility and the Treasurer accept the bid, the procurement manager shall present the bid to all the gas-fired QFs with whom the public utility has a power purchase agreement. Until the bid expires, but in no event less than two hours, each gas-fired QF may accept the natural gas and the price or only the price.

(F) If a QF does not accept the price, then the long-term gas price for the QF shall be the GPn gas price used in the commission's then posted SRAC price.

(3) Portfolio gas purchase option:

(A) Each public utility and the gas-fired QFs with whom it has a power purchase agreement shall, within 10 days of the effective date of this section, select a portfolio manager. If the parties cannot agree on the procurement manager, the Treasurer shall appoint the portfolio manager.

(B) Each gas-fired QF shall provide the portfolio manager with its gas requirements, timing, constraints, and any other pertinent information within 10 days of the portfolio manager being selected.

(C) The procurement manager, working with the public utility, shall purchase natural gas on a long-term basis to minimize price.

(D) When the portfolio manager obtains a bid, he or she shall provide the bid to the public utility and to the Treasurer. Both shall have one hour of receipt of the bid to either accept or reject the bid.

1 The Treasurer may only reject a bid if he or she determines the bid
2 is not in the state's best interest for recovering the moneys the state
3 has borrowed to finance the purchase of electric power.

4 (E) If both the public utility and the Treasurer accept the bid,
5 the portfolio manager shall buy the natural gas for the portfolio.
6 The gas price for natural gas in the portfolio shall be the weighted
7 average cost of the natural gas in the portfolio.

8 (F) A QF that agrees to the portfolio gas purchase option shall
9 purchase gas from the portfolio.

10 (4) Actual cost option:

11 (A) A gas-fired QF shall purchase natural gas for five years, or
12 the remaining term of the power purchase agreement, whichever
13 is less. The Treasurer may reject the purchase. The Treasurer may
14 only reject a purchase if he or she determines that the bid is not in
15 the state's best interest for recovering the moneys the state has
16 borrowed to finance the purchase of electric power.

17 (B) The gas-fired QFs shall choose for all of them an
18 independent auditor, and shall provide the independent auditor the
19 actual natural gas cost information and the energy payments due
20 under this section based on the purchase price of the gas for each
21 gas-fired QF. The independent auditor shall review and approve
22 the bill.

23 (C) The independent auditor shall aggregate all participating
24 gas-fired QF bills under this option, and shall send the aggregated
25 bill to the public utility. The public utility shall pay the
26 independent auditor, who shall disaggregate the funds received,
27 and disburse the funds to each gas-fired QF.

28 (5) For purposes of this subdivision, "Treasurer" means the
29 Treasurer of the state, or his or her designee.

30 (6) The Treasurer shall prepare and submit a report to the
31 Governor and to the appropriate committee's of the Legislature at
32 least three times a year on the performance of each public utility
33 in performing the gas purchase options. The report shall include,
34 if necessary, recommendations.

35 (h) No electrical corporation or gas corporation shall have any
36 obligation to serve as a portfolio manager under paragraph (3) of
37 subdivision (g), and the commission may not subject any
38 corporation's decisions to serve or not serve as portfolio manager
39 to a reasonableness review. If any corporation serves as a portfolio
40 manager, the commission may not consider the results of that

corporation's portfolio management activities in connection with this section, in connection with any other jurisdictional reasonableness review of the corporation's natural gas procurement function.

391.9. (a) (1) If a QF has not been paid by the Southern California Edison Company (SCE) or the Pacific Gas and Electric Company (PG&E) in accordance with a purchase power agreement for the month of November 2000, December of 2000, or January of 2001, SCE and PG&E shall make the payments for those months in accordance with the following schedule:

Month of delivery	Payment Due Date
November 2000	On or before April 2, 2001
December 2000	On or before May 1, 2001
January 2001	On or before June 1, 2001

(2) If a QF is not paid by SCE in accordance with paragraph (1) for moneys owed under all purchase power agreements with SCE, notwithstanding any provision of this article, the QF as of February 1, 2001, shall be paid by SCE the posted SRAC price or the SRAC price determined pursuant to this article, whichever is greater, until all the moneys owned for November, December, and January are paid to the QF.

(3) PG&E owes no moneys to QFs for the month of November 2000. If a QF is not paid by PG&E in accordance with paragraph (1) for moneys owed under all purchase power agreements with PG&E, then notwithstanding any provision of this article, the QF as of February 1, 2001, shall be paid by PG&E the posted SRAC price or the SRAC price determined pursuant to this article, whichever is greater, until all moneys owned for December and January are paid to the QF.

(b) This article shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

1 SEC. 3. The Legislature finds and declares that, because of the
2 unique circumstances applicable only to specified public utilities
3 and qualified facilities, a statute of general applicability cannot be
4 enacted within the meaning of subdivision (d) of Section 16 of
5 Article IV of the California Constitution. Therefore, this special
6 statute is necessary.

7 SEC. 4. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 SEC. 5. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety
18 within the meaning of Article IV of the Constitution and shall go
19 into immediate effect. The facts constituting the necessity are:

20 To help avoid Stage 3 alerts in California, it is necessary that this
21 act take effect immediately.

